

LIMITED PRACTICE RULE FOR LIMITED PRACTICE OFFICERS

(a) Purpose. The purpose of this rule is to authorize certain persons to select, prepare and complete legal documents incident to the closing of real estate and personal property transactions and to prescribe the conditions of and limitations upon such activities.

(b) Limited Practice Board.

(1) *Composition.* The Limited Practice Board (referred to herein as the "LP Board") shall consist of nine members appointed by the Supreme Court. Not less than four of the members of the LP Board must be lawyers admitted to the practice of law in the State of Washington. Four members of the LP Board must be business representatives, one each of the following four industries: escrow, lending, title insurance, and real estate. Appointments shall be for 3-year staggered terms. No member of the LP Board may serve more than two consecutive terms. Terms shall end on September 30 of the applicable year. The Supreme Court shall designate one of the members of the LP Board as chairperson.

(2) *Duties and Powers.*

(A) LPO Examination. The LP Board shall work with the Bar and others as necessary to create, maintain, and grade an LPO examination for admission to practice law under this rule. The examination shall consist of such questions as the LP Board may select on such subjects as may be listed by the Board and approved by the Supreme Court.

(B) Grievances and discipline. The LP Board's involvement in the investigation, hearing and appeal procedures for handling complaints of persons aggrieved by the failure of limited practice officers to comply with the requirements of this rule and of the Limited Practice Officer Rules of Professional Conduct shall be as established in the Rules for Enforcement of Limited Practice Officer Conduct (ELPOC).

(C) Approval of Forms. The LP Board shall approve standard forms for use by limited practice officers in the performance of legal services authorized by this rule.

(D) Rules. The LP Board shall propose to the Supreme Court amendments to these rules as may appear necessary to implement and carry out the provisions of this rule.

(3) *Expenses of the Board.* Members of the LP Board shall not be compensated for their services. For their actual reasonable and necessary expenses incurred in the performance of their duties, they shall be reimbursed according to the Bar's expense policies.

(4) *Administration.* The administrative support to the LP Board shall be provided by the Bar. All notices and filings required by these rules, including applications for admission as a Limited Practice Officer, shall be sent to the headquarters of the Bar.

(c) [Reserved.]

(d) Scope of Practice Authorized by Limited Practice Rule. Notwithstanding any provision of any other rule to the contrary, a person licensed as a limited practice officer under this rule may select, prepare, and complete documents in a form previously approved by the LP Board for use by others in, or in anticipation of, closing a loan, extension of credit, sale, or other transfer of interest in real or personal property. Such documents shall be limited to deeds, promissory notes, guaranties, deeds of trust, reconveyances, mortgages, satisfactions, security agreements, releases, Uniform Commercial Code documents, assignments, contracts, real estate excise tax affidavits, bills of sale, and powers of attorney. Other documents may be from time to time approved by the LP Board.

(e) Conditions Under Which Limited Practice Officers May Prepare and Complete Documents. Limited practice officers may render services authorized by this rule only under the following conditions and with the following limitations:

(1) *Agreement of the Clients.* Prior to the performance of the services, all clients to the transaction shall have agreed in writing to the basic terms and conditions of the transaction. In the case of a power of attorney prepared in anticipation of a transaction, the principal(s) and attorney(s)-in-fact shall have provided the limited practice officer consistent written instructions for the preparation of the power of attorney.

(2) *Disclosures to the Clients.* The limited practice officer shall advise the clients of the limitations of the services rendered pursuant to this rule and shall further advise them in writing:

(A) that the limited practice officer is not acting as the advocate or representative of either of the clients;

(B) that the documents prepared by the limited practice officer will affect the legal rights of the clients;

(C) that the clients' interests in the documents may differ;

(D) that the clients have a right to be represented by lawyers of their own selection; and

(E) that the limited practice officer cannot give legal advice as to the manner in which the documents affect the clients.

The written disclosure must particularly identify the documents selected, prepared, and/or completed by the limited practice officer and must include the name, signature, and number of the limited practice officer.

(f) Continuing License Requirements.

(1) *Continuing Education.* Each active limited practice officer must complete a minimum number of credit hours of continuing education, as prescribed by APR 11.

(2) *Financial Responsibility.* Each active limited practice officer shall submit to the LP Board proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted under APR 12 in one of the following described manners.

A. Submit an individual policy for Errors and Omissions insurance in the amount of at least \$100,000;

B. Submit an Errors and Omissions policy of the employer or the parent company of the employer who has agreed to provide coverage for the LPO's ability to respond in damages in the amount of at least \$100,000;

C. Submit the LPO's audited financial statement showing the LPO's net worth to be at least \$200,000;

D. Submit an audited financial statement of the employer or other surety who agrees to respond in damages for the LPO, indicating net worth of \$200,000 per each limited practice officer employee up to and including five, and an additional \$100,000 per each limited practice officer employee over five, who may be subject to the jurisdiction of the Limited Practice Board; or

E. Submit proof of indemnification by the limited practice officer's government employer.

Each active LPO shall certify annually continued financial responsibility in the form and manner as prescribed by the Bar. Each LPO shall notify the Bar of any cancellation or lapse in coverage. When an LPO is demonstrating financial responsibility by (1) an endorsement on the employer's Errors and Omissions insurance policy or (2) submission on the employer's audited financial statement accompanied by the Certificate of Financial Responsibility, the Bar shall notify the employer when the LPO's status changes from Active to another status or when the LPO is no longer admitted to practice.

(3) *License Fees and Assessments.* Each limited practice officer must pay the annual license fee established by the Board of Governors, subject to review by the Supreme Court, and any mandatory assessments as ordered by the Supreme Court. Provisions in the Bar's Bylaws regarding procedures for assessing and collecting lawyer license fees and late fees, and regarding deadline, rebates, apportionment, fee reductions, and exemption, and other issues relating to fees and assessment, shall also apply to LPO license fees and late fees. Failure to pay may result in suspension from practice pursuant to APR 17.

(4) *Trust Account.* Each active limited practice officer shall certify annually compliance with rules 1.12A and 1.12B of the LPO Rules of Professional Conduct. Such certification shall be filed in the form and manner as prescribed by the Bar and shall include the bank where each account is held and the account number. Failure to certify may result in suspension from practice pursuant to APR 17.

(g) Existing Law Unchanged. This rule shall in no way expand, narrow, or affect existing law in the following areas:

(1) The fiduciary relationship between a limited practice officer and his or her customers or clients;

(2) Conflicts of interest that may arise between the limited practice officer and a client or customer;

(3) The right to act as one's own attorney under the pro se exception to the unauthorized practice of law including but not limited to the right of a lender to prepare documents conveying or granting title to property in which it is taking a security interest;

(4) The lack of authority of a limited practice officer to give legal advice without being licensed to practice law;

(5) The standard of care which a limited practice officer must practice when carrying out the functions permitted by this rule.

(h) Treatment of Funds Received Incident to the Closing of Real or Personal Property Transactions. Persons admitted to practice under this rule shall comply with LPORPC 1.12A and B regarding the manner in which they identify, maintain, and disburse funds received incidental to the closing of real and personal property transactions, unless they are acting pursuant to APR 12(g)(3).

(i) Confidentiality and Public Records.

(1) GR 12.4 shall apply to access to LP Board records.

(j) Inactive Status. An LPO may request transfer to inactive status after being admitted. An LPO on inactive status is required to pay an annual license fee as established by the Board of Governors and approved by the Supreme Court. An LPO on inactive status is not required to meet the financial responsibility requirements or the MCLE requirements.

(k) Reinstatement to Active Status. An LPO on inactive status or suspended from

practice may return to active status by filing an application and complying with the procedures set forth for lawyer members of the Bar in the Bar's Bylaws.

(I) Voluntary Resignation. Any LPO may request to voluntarily resign the LPO license by notifying the Bar in such form and manner as the Bar may prescribe. If there is a disciplinary investigation or proceeding then pending against the LPO, or if the LPO has knowledge that the filing of a grievance of substance against such LPO is imminent, resignation is permitted only under the provisions of the applicable disciplinary rules. An LPO who resigns the LPO license cannot practice law in Washington in any manner, unless they are licensed or authorized to do so by the Supreme Court.

Comment

[1] Comment re APR 12(d)

Powers of attorney authorizing a person to negotiate and sign documents in anticipation of, or in the closing of, a transaction are included in the documents limited practice officers are authorized to prepare. Such documents may include, but are not limited to, purchase and sale agreements for real or personal property, loan agreements, and letters of intent.

[2] Comment re LPO Professional Standard Of Care

The purpose of this comment is to discuss the legal standard of care to which a limited practice officer is subject, while also clarifying the limited duties of a limited practice officer compared to an attorney when selecting and preparing legal documents and to show the greater breadth of a lawyer's duties and services which a party may not expect when engaging a limited practice officer.

Generally, when anyone selects and prepares a legal document for another, they (including licensed limited practice officers) will be held to the standard of a lawyer: "to comply with the duty of care, an attorney must exercise the degree of care, skill, diligence, and knowledge commonly possessed and exercised by a reasonable, careful, and prudent lawyer in the practice of law in this jurisdiction" *Hizey v. Carpenter*, 119 Wn.2d 251, 261, 830 P.2d 246 (1992). However, when selecting and preparing approved forms a limited practice officer, though having a limited license to practice law as defined and limited in APR 12, will not be authorized or charged with many of the duties of a lawyer. Except as provided otherwise in APR 12 rules and regulations, these include the duty to investigate legal matters, to form legal opinions (including but not limited to the capacity of an individual to sign for an entity or whether a legal document is effective), to give legal advice (including advice on how a legal document affects the rights or duties of a party), or to consult with a party on the advisability of a transaction. See also LPORPC 1.1, Competence, and LPORPC 1.3, Communication.

APR 12 APPENDIX. [Reserved.]

[Adopted effective February 12, 1965; Amended effective January 21, 1983; October 28, 1983; September 13, 1985; December 9, 1995; July 1, 2002; January 1, 2009; March 1, 2016; September 1, 2017.]